

Before the
Federal Communications Commission
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of the Commission's)	WT Docket No. 97-82
Rules Regarding Installment Payment)	
Financing For Personal Communications)	
Services (PCS) Licenses)	

COMMENTS OF OMNIPPOINT CORPORATION

Omnipoint Corporation ("Omnipoint"), by its attorneys, files these comments in response to the "Petition for Reconsideration of Conestoga Wireless Company" filed on October 23, 1998 in the above-captioned proceeding. Specifically, Omnipoint concurs with Conestoga's position that the Commission reduce its minimum opening bid ("MOB") for the Block C re-auction of 10% of the final bid prices resulting from the initial Block C auction.¹ As articulated in its comments responding to the Wireless Bureau's Public Notice,² Omnipoint believes that, if an MOB is necessary, then a more appropriate MOB for the Block C re-auction licenses would be \$.02/MHz/POP.³

¹ *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, Fourth Report and Order*, FCC 98-176 (rel. Aug. 19, 1998) ("Fourth R&O").

² Public Notice, DA 98-2318, Report No. AUC-98-23-A (Auction No. 22) (rel. Nov. 12, 1998) ("Public Notice"), *revised*, Public Notice, DA 98-2337, Report No. AUC-98-22-B (Auction No. 22) (rel. Nov. 19, 1998).

³ While Omnipoint agrees with Conestoga's fundamental point that the 10% MOB approach sets initial bid prices too high, Omnipoint does not agree with Conestoga's proposed solution MOB's set at 10% of the net average high bid from the Block D and E

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Omnipoint believes that either the Commission, in this proceeding, or the Bureau, in the proceeding initiated on Block C re-auction procedural matters, should reduce the MOB's and adopt Omnipoint's suggested approach. For that reason, Omnipoint submits these comments to restate and further describe its position on MOB's in the Block C re-auction.

In Omnipoint's view, MOB's set at 10% of the final auction price from the initial Block C auction could seriously impede the efficient, market-based functioning of the auction. The purpose of an MOB, which is "to . . . ensure that licenses are not dramatically undervalued,"⁴ is not met by arbitrarily resorting to a schedule of high minimum opening bids. To the contrary, a relatively high MOB suggests the Commission is not simply protecting from dramatic undervaluation but it is engaging in estimations of final bid prices, *i.e.*, supplanting the role of the simultaneous multi-round auction itself. This would threaten a core function of the auction process by interfering with the legitimate marketplace exchange of pricing information that goes on during the auction. This was clearly not what Congress intended with the 1997 amendments to Section 309(j) of the Act, and it is flatly inconsistent with the Commission's policy positions on MOB's. In addition, the practical danger of relatively high MOB for the Block C re-auction is apparent: markets will likely go unbid where those same licenses would have been allocated efficiently in an auction with a less restrictive MOB schedule.

A high MOB that interferes with a market allocation of licenses is especially inappropriate in the context of broadband PCS, where the Commission has emphasized the importance of auctions as a means of efficient license allocation across multiple BTA

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licenses or Conestoga's position of selective MOB reduction on a license-by-license basis at the request of a potential bidder. Conestoga Petition at 3.

⁴ *Auction of Local Multipoint Distribution Service, Order*, 13 FCC Rcd. 782, ¶ 10 (WTB, 1998) ("LMDS Order").

regions.⁵ While a market-based auction may result in prices for licenses in outlying markets to fall below average auction prices, licensees acquiring such markets often do so as part of a multi-license regional strategy for system deployment. Encouraging such auction strategies fully compensates the public because it also results in intensive competition for the “core” markets. It is especially critical that the core markets not be set artificially high or else they may go unbid, which would, in turn, render the peripheral markets valueless. In sum, higher MOB prices would significantly interfere with an efficient market outcome.

In addition, the proposed 10% MOB schedule is inconsistent with the Commission’s approach to setting MOB’s: an evaluation of the “relevant factors that could reasonably have an impact on valuation of the spectrum being auctioned.”⁶ For the Block C re-auction, several factors indicate that the Commission should place a relatively moderate, and not a relatively high, MOB schedule. *First*, the Block C re-auction licensees will be the last entrant into highly competitive wireless markets; cellular incumbents have had over a decade of duopoly control, and five PCS licensees (as well as SMR licensees) have already been granted licenses to operate in every market. In many markets, several operational wireless competitors have already built systems and commenced commercial operation. *Second*, final winning bids of the initial Block C auctions reflected the 10-year installment payment plan, with interest only for the first six years. By contrast, the re-auction prices are likely to be significantly less than the nominal license prices of the initial auction because no government financing will be

⁵ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Second Report and Order, 9 FCC Rcd. 2348, 2361 (1994); *Fifth Report and Order*, 9 FCC Rcd. 5532, ¶ 36 (1994).

⁶ *Implementation of Section 309(j) of the Communications Act*, *First Report and Order*, MM Dkt. 97-234, 13 Communications Reg. (P&F) 279, ¶ 134 (1998)

offered. *Third*, the valuation of the Block C re-auction spectrum continues to be uncertain, and subject to discounting, due to the GWI bankruptcy decisions and the pending NextWave bankruptcy case, which significantly undermine valuations of the re-auctioned Block C spectrum and the ability of Block C participants to raise significant funding for the auction. *Fourth*, the Block C re-auction licensee does not obtain a “free and clear” right to use of the spectrum; rather, the rights of the Block C licensee are subject to the prior rights of microwave incumbents, in accordance with the process of frequency coordination with such incumbents. *Finally*, the Block C re-auction is reserved for “small business” participants in the initial auction and other “small businesses.” A relatively high MOB schedule, however, could result in a market barrier to entry for small businesses. Thus, Omnipoint believes that the mitigating factors surrounding the Block C re-auction would counsel for a relatively conservative MOB schedule.

Further, Omnipoint notes that the proposed 10% MOB schedule is not consistent with and is *significantly* higher than MOB schedules set in all prior FCC auctions. The prior MOB schedules set for prior auctions is summarized, as follows:

SMR Auction	\$.02/MHz/POP;⁷
LMDS Auction	\$0.0004/MHz/POP to \$0.002/MHz/POP;⁸
220 MHz Auction	\$.0125/MHz/POP to \$0.0175/MHz/POP;⁹
LMS Auction	\$.0008/MHz/POP.¹⁰

⁷ SMR Order.

⁸ LMDS Order, ¶ 9 (LMDS MOB schedule varies depending on size of market).

⁹ Auction of Phase II 220 MHz Service Licenses – Minimum Opening Bids, Public Notice, DA 98-1010, 1998 WL 274682 (F.C.C.) (May 29, 1998).

¹⁰ Auction of Location and Monitoring Service – Minimum Opening Bids, Public Notice, DA 98-1879, 1998 WL 651109 (F.C.C.) (Sept. 23, 1998).

As explained below, the 10% MOB set initial prices for many licenses at levels that are multiples of the MOB's set in all prior auctions. Omnipoint respectfully submits what the Bureau held in the SMR auction, in setting a "ceiling" of \$.02/MHz/POP: *"we find that establishing minimum opening bids in excess of these amounts may threaten the goals of wide and robust bidder participation."*¹¹

A quantitative analysis of the 10% MOB schedule also shows that it is likely to interfere with the license valuation process that should occur during the auction process itself. For example, if the 10% MOB schedule were implemented, Block C re-auction participants would face MOB's for 150 Block C licenses that are in excess of \$.06/MHz/POP. In addition, the 10% MOB schedule yields both exceedingly high prices preset for the initial round and results in anomalous prices for certain markets, as shown:

Market No.	Market Name	Proposed Minimum Opening Bid	Proposed Min. Opening Bid/Pop	Proposed Min. Opening Bid/MHz/Pop
B347	Phoenix, AZ	\$21,380,775.00	\$8.89	\$0.30
B222	Kahului, HI	\$775,200.00	\$7.71	\$0.26
B491	US Virgin Islands	\$779,775.00	\$7.64	\$0.25
B101	Dallas, TX	\$29,102,325.00	\$6.72	\$0.22
B245	Las Vegas, NV	\$2,855,929.00	\$3.33	\$0.22
B192	Honolulu, HI	\$5,359,425.00	\$6.41	\$0.21
B372	Reno, NV	\$2,780,258.00	\$6.33	\$0.21
B399	Salt Lake City, UT	\$8,229,383.00	\$6.29	\$0.21
B157	Fresno, CA	\$4,702,658.00	\$6.22	\$0.21

¹¹ *Auction of 800 MHz Specialized Mobile Radio Service Licenses, Order*, DA 97-2147, at ¶ 13 (WTB, rel. Oct. 6, 1997) ("SMR Order").

Many auction participants, and potential participants, will also look to the Block D, E, and F auction prices to evaluate the valuations of Block C spectrum, since it is the most recent broadband PCS auction. However, the 10% MOB schedule would cause many Block C licenses to be overvalued in the auction from the very first round, as compared to the prices paid in the Block D, E, and F auction. For example, on 67 licenses to be offered in the Block C re-auction (19% of the total), the 10% MOB would set initial round prices higher than all of the market's Block D, E, and F license final prices, on a per-MHz-POP basis. For 154 licenses to be offered in the Block C re-auction (43% of the total), the proposed 10% MOB is higher than at least one of that same market's Block D, E and F license prices, on a per-MHz-POP basis. See "FCC Proposed Minimum Opening Bid Market by Market Analysis" (attached hereto). Such MOB's are likely to interfere with the efficiencies of the auction process and to deter some potential bidders from even entering the auction.

To address these issues, Omnipoint proposes a MOB for each Block C re-auction license not to exceed \$.02/MHz/POP. This reduced, uniform MOB schedule would have a number of qualitative benefits, including: keeping license prices sufficiently competitive for both regional and market-specific auction competitors; employing the same MOB of \$.02/MHz/POP that was used successfully in the SMR auction; simplifying the auction process for all participants; keeping the MOB for the Block C re-auction within the reasonable range of MOB schedules adopted in previous auctions. In addition, for 88% of the licenses, a \$.02/MHz/POP approach sets initial round re-auction prices below final prices on the Block D, E, and F licenses in the same market, on a per-MHz-POP basis. See "\$.02/MHz/POP Minimum Opening Bid Market By Market Analysis" (attached hereto). Finally, this modified approach is consistent with the

Commission's MOB goals of obtaining a reasonable return to the public for the Block C spectrum, as it yields significant dollar amounts for the opening bid on each license at auction.

For these reasons, Omnipoint supports Conestoga's Petition requesting for the Commission to reform and reduce its initial 10% MOB prices for the upcoming Block C re-auction.

Respectfully submitted,

OMNIPOINT CORPORATION

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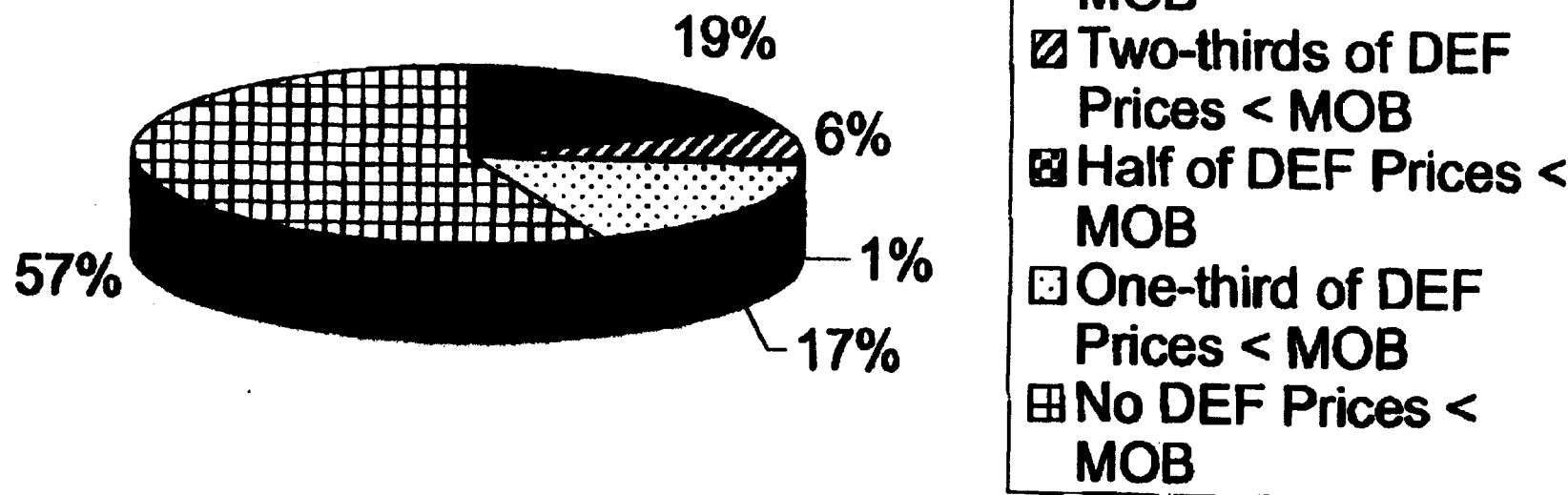
Its Attorneys

Date: December 10, 1998

NB: All price comparisons done on a per-MHz-pop basis.

Omnipoint Corporation
Ex Parte Presentation
December 9, 1998
WT97-82, DA No. 98-2318

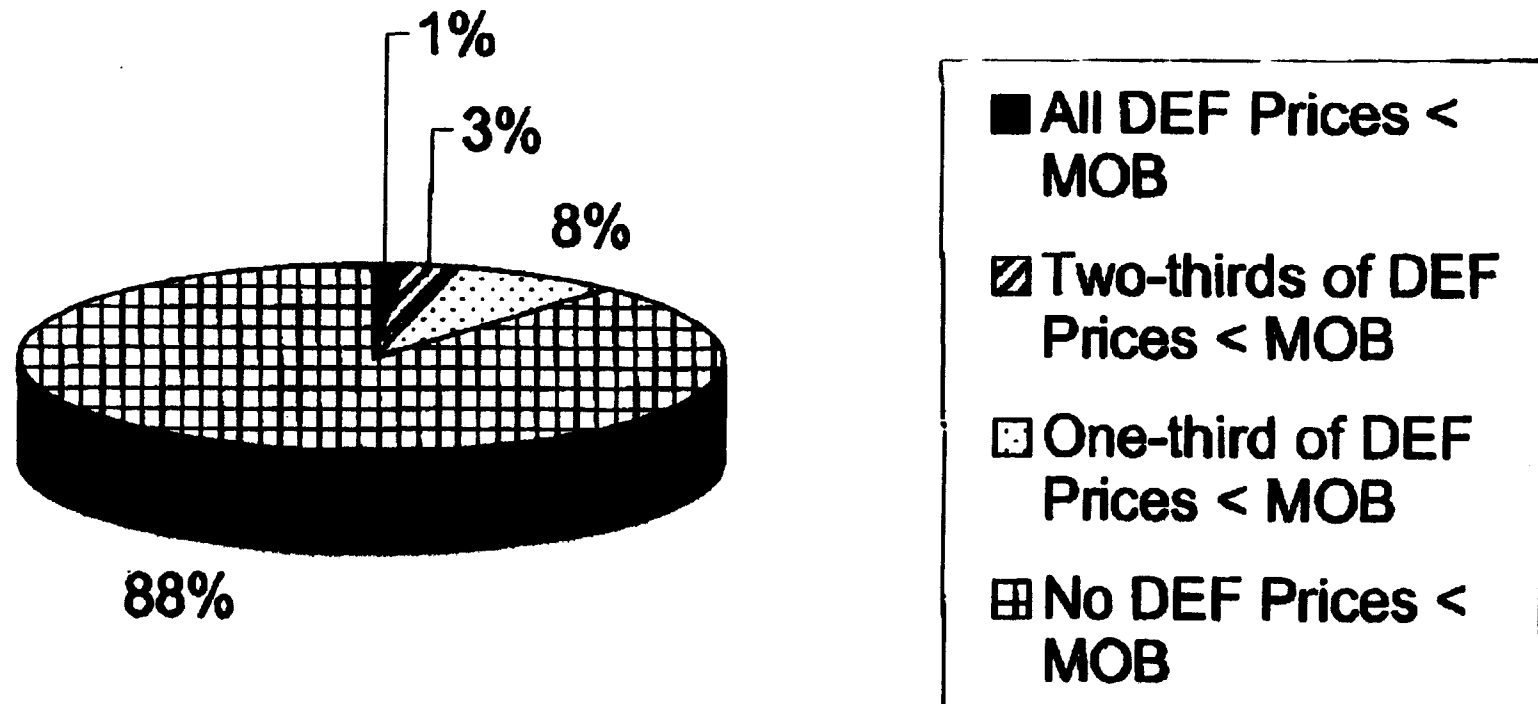
FCC Proposed Minimum Opening Bid Market by Market Analysis



In 43% (or 154) of the 356 markets scheduled for reauction, the proposed MOB is higher than at least one of the FINAL prices for D, E, and F licenses.

NB: All price comparisons done on a per-MHz-pop basis.

\$0.02/MHz/Pop Minimum Opening Bid Market by Market Analysis

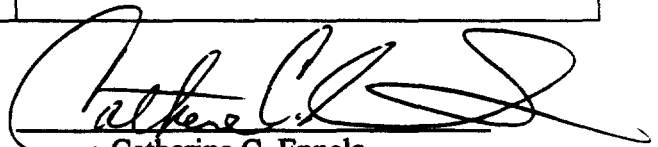


Using a MOB of \$0.02/MHz/Pop, the MOB exceeds the price of a DEF license for the same market in only 12% (or 42) of the markets.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments were this 10th day of December, 1998, served by hand delivery on the following individuals:

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